

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 1085 of 1998

with

FIRST APPEAL No 1086 of 1998

Hon'ble MR.JUSTICE Y.B.BHATT and

MR.JUSTICE R.P.DHOLAKIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?

STATE OF GUJARAT

Versus

DIPSING M CHAUHAN DECD.THRO' HEIRS GUJARABA WD/O DIPSING

Appearance:

MR. LR POOJARI, AGP for the appellant

CORAM : MR.JUSTICE Y.B.BHATT and
MR.JUSTICE R.P.DHOLAKIA

Date of decision: 24/07/98

COMMON ORAL JUDGEMENT (Per: Y.B.Bhatt,J.)

These are appeals filed by the State of Gujarat under Sec.54 of the Land Acquisition Act read with

Sec.96, CPC, challenging the common judgment and awards passed by the Reference Court under Sec.18 of the said Act.

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#. We have heard the learned counsel for the appellant on the merits of the impugned judgment, and have perused such evidentiary material to which our attention has been drawn.

#. Looking to the facts and circumstances of the case, we are satisfied that the impugned judgment and awards do not merit any interference in these appeals. The impugned judgment, taken in its overall perspective, is, in our opinion, not assailable. We agree with the assessment of the evidence on the part of the Reference Court, the conclusions drawn therefrom and the findings of fact recorded.

#. We may, however, further add that the lands under acquisition were acquired for the Guhai Irrigation Project and are situated in the Village Likhi, Taluka Himmatnagar, District Sabarkantha. In this context, it may be noted that there is no controversy that the Village Likhi is about 3 to 4 kms. from the Village Sabli, wherein substantial lands had been acquired for the same Project.

#. In this context, the earlier Bench has decided a number of matters pertaining to acquisition from the Village Likhi. We, however, refer only to two of such decisions. The first of such decision is in First Appeal Nos.818 of 1990 to 882 of 1990 (Coram: Y.B.Bhatt & C.K.Buch, JJ) decided on 5th February, 1998. In the said decision, while dealing with the appeals filed by the State, said Bench determined the value of the acquired lands @ Rs.468/- per are for non-irrigated land and Rs.678/- per are for irrigated land, with reference to the Sec.4 notification published on 27th May, 1982. In the instant case, the relevant notification under Sec.4 is dated 2nd June, 1980, and the valuation determined by the Reference Court is Rs.600/- per are for irrigated land and Rs.370/- per are for non-irrigated land. Thus, we find that when allowance is made for the time interval of approximately two years between the two notifications under Sec.4, and granting the nominal rise in market value due to this lapse of time, we find it reasonable and acceptable that the value of the irrigated lands would raise from Rs.600/- per are to Rs.678/- per are whereas the value of non-irrigated land would rise from Rs.370/- to Rs.468/- per are.

#. Another decision also rendered by the earlier Bench, to which one of us was a party (Coram: Y.B.Bhatt & C.K.Buch, JJ) in First Appeal Nos.3842 of 1997 to 3843 of 1997 decided on 27th April, 1998 also determines the market value of lands in the Village Sabli @ Rs.678/- per are for irrigated land. As aforesaid, the instant Village Likhi and the Village Sabli are only a short distance apart, and there is no controversy that the agricultural yield and the fertility of lands in the two Villages are comparable. For this reason also, the impugned judgment and awards of the Reference Court required to be upheld.

#. We are also required to note a contention raised by learned counsel for the appellant to the effect that the award passed by the L.A.O. under Sec.11 of the said Act was a consent award and therefore, no reference under Sec.18 would lie. In the context of this submission, we are bound to observe firstly that no such contention was raised in the written statement of the State filed before the Reference Court and consequently, no issue was raised. It does however, appear that the State sought to rely upon certain Kabulatnamas produced on record, which were allegedly signed by the original landholders agreeing to accept the award that may be declared by the L.A.O. under Sec.11. What is material, however, and there is no factual controversy on this aspect, that the contents of the document are not proved in as much as said document is merely produced on record. Moreover, the so-called kabulatnama has not been signed by any person acting on behalf of the State Government or the L.A.O. It appears that the documents bear only the signatures and/or thumb marks of the landholders in relation to such signatures and thumb marks, and the claimants have categorically denied that the same were affixed to the so-called kabulatnama as a token of their having agreed to accept the award which may be declared under Sec.11. It is the specific case of the landholders that they were not aware of putting their signatures and/or thumb marks on any such document, with the conscious realisation that they were executing the kabulatnama. It is also the specific case of the land owners that their signatures and/or thumb marks were not put on the said document after the contents and/or the context of the documents were explained to them. In other words, they claimed total ignorance of the contents of the document. Since the contents of the documents have not been proved by appropriate evidence led on the part of the State/L.A.O., the Reference Court has rightly accepted the deposition of the landholders in this regard.

We are, therefore, bound to agree with the finding of fact recorded by the Reference Court that the award by the L.A.O. under Sec.11 could not be said to be a consent award qua the landholders.

#. These appeals are, therefore, dismissed.

(Y.B.Bhatt,J.)

(R.P.Dholakia,J.)

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